

Letter of Findings Number: 04-20120592
Sales/Use Tax
For Tax Years 2009, 2010, and 2011

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ISSUE

I. Sales/Use Tax – Imposition.

Authority: IC § 6-2.5-1-5; IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-2; IC § 6-2.5-3-1; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Rhoades v. Indiana Dep't of State Revenue, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466 (Ind. Tax Ct. 1993); [45 IAC 2.2-4-27](#).

Taxpayer protests the assessments on Fuel Refill Charges that customers paid when the customers chose to return the rental cars without refilling the fuel.

STATEMENT OF FACTS

Taxpayer owns a rental car fleet and operates a motor vehicle rental business at several locations in Indiana and elsewhere. Taxpayer provides its rental cars with sufficient fuel to its customers ("Customers") and Customers are required to return the same amount of the fuel when they return the cars. Customers usually rent or lease Taxpayer's vehicles for periods of less than 30 days.

At the commencement of the rental transactions, in addition to the standard rental charge, Taxpayer offers Customers several rental car options. One of the options is to return the rental car without refilling the fuel tank. If Customers choose that option, Taxpayer imposes a Fuel Refill Charge. Taxpayer further offers Customers two alternatives with respect to the Fuel Refill Charge: Customers can (1) pre-pay or (2) post-pay based on the consumption of the fuel. The pre-pay option provides Customers an option, before using the rental vehicles, to lock into a lower price for the fuel they are going to consume when they return the cars. The post-pay option allows Customers to postpone their decisions until they return the rental cars. For example, Customers can choose to pre-pay \$3 per gallon prior to their use of the cars or post-pay \$5 per gallon when they return the rental cars without refilling the fuel. The total amount of the Fuel Refill Charges for Customers who choose to pre-pay or post-pay is not determined at this time. Taxpayer's employees note Customers' choice(s) in the rental agreements and Customers initial and acknowledge their choice(s) stated in the rental agreements.

Before Customers use the rental cars, Taxpayer and Customers inspect the cars at Taxpayer's parking lot. Taxpayer notes the condition of the cars and the amount of fuel indicated on the dashboard of the cars. When the lease periods end, Customers are expected to return the rental cars in good condition (similar to the condition before Customers use the cars), which includes the same level of fuel in the cars. Most of Customers return the rental cars with the same level of fuel in the cars while some Customers choose to return the rental cars without refilling the fuel.

Regardless of whether Customers choose the options offered by Taxpayer, Taxpayer bills Customers and Customers pay after they return the rental cars. Taxpayer's invoices generally contain a standard rental charge as well as sales tax and auto rental excise tax on the standard rental charge. For Customers who return the rental cars without refilling the fuel, in addition to the standard rental charge, Taxpayer charges a separately stated line item (i.e., Fuel) in the invoices; however, the invoices do not specifically state whether Customers elected the pre-pay or post-pay options. Taxpayer's invoices show that it does not collect either sales tax or auto rental excise tax on the "Fuel" charge. Taxpayer subsequently refills the fuel tanks of the cars at nearby gas stations and pays the advertised price.

The Indiana Department of Revenue ("Department") audited Taxpayer's business records for 2009 through 2011 tax years. Taxpayer and the Department agreed to utilize a sampling method to project the audit result. Pursuant to the audit, the Department determined that Taxpayer failed to collect sales tax and auto rental excise tax on Fuel Refill Charges for the years at issue.

The Department's audit also determined that Taxpayer did not pay sales tax or self-assess and remit use tax on certain purchases of tangible personal property, which Taxpayer used for its business. The audit thus assessed Taxpayer additional taxes and interest.

Taxpayer protested the assessments on the Fuel Refill Charges. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest concerning the assessments of sales tax on its Fuel Refill Charges. Letters of Findings 11-20120593 through 11-20120606 address Taxpayer's protest of the auto rental excise tax assessments. Additional facts will be provided as necessary.

I. Sales/Use Tax – Imposition.

DISCUSSION

The Department's audit assessed sales tax on the Fuel Refill Charges on the ground that the charges were part of the consideration for the rental transactions. The audit noted that:

Audit discovered rental invoices including charges for fuel to refill vehicles upon return to the level of fuel included at the inception of rental. The fuel refill charge was omitted from taxable rental income. According to [45 IAC 2.2-4-27](#), the gross receipts from renting or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable. Gross receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction for expenses or costs incidental to the conduct of the business. (Page 4 to Audit Summary).

Taxpayer, to the contrary, claimed that "the Fuel Refill Charge is not part of the rental transaction." Rather, Taxpayer claimed that the Fuel Refill Charge is a reimbursement for its additional costs due to Customers' failure to refill the vehicles. Taxpayer also asserted that the Fuel Refill Charge is for an optional service and divisible from the underlying rental transaction. Thus, as a service, the Fuel Refill Charge is not subject to sales tax. Taxpayer further argued that itself was the consumer of the fuel and properly paid sales tax when it refilled the cars at the nearby gas stations.

As a threshold issue, all tax assessments are prima facie evidence that the Department's assessment of tax is presumed correct. "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dep't. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). The sales tax "is measured by the gross retail income received by a retail merchant in a retail unitary transaction." IC § 6-2.5-2-2(a). Additionally, a rental or leasing transaction involving tangible personal property also constitutes a retail transaction and "the gross receipts from renting or leasing tangible personal property are taxable." [45 IAC 2.2-4-27](#). A lessor of the leasing tangible personal property is "deemed to be a retail merchant" – as agent for the state of Indiana – is responsible for collecting the amount of actual receipts from the rental or leasing. [45 IAC 2.2-4-27\(b\)](#). "The amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business." [45 IAC 2.2-4-27\(d\)\(1\)](#). "The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement." Id.

Indiana also imposes a complementary excise tax called "the use tax" on "the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a). "Use" means the "exercise of any right or power of ownership over tangible personal property." IC § 6-2.5-3-1(a). The use tax is functionally equivalent to the sales tax. See Rhoads v. Indiana Dep't of State Revenue, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002). By complementing the sales tax, the use tax ensures that non-exempt retail transactions (particularly out-of-state retail transactions) that escape sales tax liability are nevertheless taxed. Id.; USAir, Inc. v. Indiana Dep't of State Revenue, 623 N.E.2d 466, 468–69 (Ind. Tax Ct. 1993). The use tax ensures that, after such goods arrive in Indiana, the retail purchasers of the goods bear their fair share of the tax burden. To trigger imposition of Indiana's use tax, tangible personal property must (as a threshold matter) be acquired in a retail transaction. Id. A taxable retail transaction occurs when (1) a party acquires tangible personal property as part of its ordinary business for the purpose of reselling the property; (2) that property is then exchanged between parties for consideration; and (3) the property is used in Indiana. See IC § 6-2.5-1-2; IC § 6-2.5-4-1(b), (c); IC § 6-2.5-3-2(a).

IC § 6-2.5-2-1 provides:

(a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
(b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-1-5, in relevant part, states:

(a) Except as provided in subsection (b), "**gross retail income**" means the total amount of consideration, including cash, credit, property, and **services, for which tangible personal property is sold, leased, or rented**, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the **cost of materials** used, labor or **service cost**, interest, losses, all costs of transportation to the seller, **all taxes imposed on the seller**, and **any other expense of the seller**;
- (3) **charges by the seller for any services necessary to complete the sale**, other than delivery and installation charges;
- (4) delivery charges; or
- (5) consideration received by the seller from a third party if:

- (A) the seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
- (B) the seller has an obligation to pass the price reduction or discount through to the purchaser;
- (C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
- (D) the price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

For purposes of subdivision (4), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing. (**Emphasis added**).

[45 IAC 2.2-4-27](#), in pertinent part, provides:

(a) In general, the **gross receipts** from renting or leasing tangible personal property are taxable. This regulation [[45 IAC 2.2](#)] only exempts from tax those transactions which would have been exempt in an equivalent sales transaction.

(b) **Every person engaged in the business of the rental or leasing of tangible personal property**, other than a public utility, **shall be deemed to be a retail merchant** in respect thereto and such **rental or leasing transaction shall constitute a retail transaction** subject to the **state gross retail tax on the amount of the actual receipts from such rental or leasing**.

(c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The lessor must collect and remit the gross retail tax or use tax on the amount of actual receipts as agent for the state of Indiana. The tax is borne by the lessee, except when the lessee is otherwise exempt from taxation.

(d) **The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.**

(1) **Amount of actual receipts.** The amount of actual receipts means **the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business**. The gross receipts **include any consideration received from the exercise of an option contained in the rental or lease agreement**; royalties paid, or agreed to be paid, either on a lump sum or other production basis, for use of tangible personal property; and any receipts held by the lessor which may at the time of their receipt or some future time be applied by the lessor as rentals.

(2) Rental or lease period. For purposes of the imposition of the gross retail tax or use tax on rental or leasing transactions, each period for which a rental is payable shall be considered a complete transaction. In the case of a weekly rate, each week shall be considered a complete transaction. In the case of a continuing lease or contract, with or without a definite expiration date, where rental payments are to be made monthly or on some other periodic basis, each payment period shall be considered a completed transaction.

...

(4) Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased. (**Emphasis added**).

In this instance, Taxpayer claimed that, before the rental transactions occurred, it offered Customers various options, which included the option of returning the rental cars without refilling the fuel. Taxpayer also stated that it specifically informed Customers that the Fuel Refill Charge is an additional cost outside the standard fee for the rental of the vehicle. Taxpayer thus maintained that the Fuel Refill Charge is for an optional service which is separate and divisible from the underlying rental transaction and is not taxable. Alternatively, Taxpayer asserted that because it supplied Customers the rental cars with fuel, Taxpayer itself was the consumer of the fuel under [45 IAC 2.2-4-27\(d\)\(4\)](#). Thus, Taxpayer maintained that it properly paid sales tax at the nearby gas stations when it refilled the tanks of its rental cars, and that the Fuel Refill Charge is intended to reimburse Taxpayer for the cost of the fuel. Taxpayer contended that the audit's assessments on the Fuel Refill Charge were taxes on the taxes which it already paid, thus resulting in tax pyramiding. Taxpayer submitted three sample copies of its rental agreements and invoices to support its protest.

Upon reviewing Taxpayer's documentation, however, the Department is not able to agree. Pursuant to [45 IAC 2.2-4-27](#), "[T]he gross receipts from renting or leasing tangible personal property are taxable." Taxpayer, as the lessor, is responsible for collecting the amount of actual receipts from the rental or lease. [45 IAC 2.2-4-27\(d\)\(1\)](#) further states that "[t]he amount of actual receipts means the gross receipts from the rental or leasing of tangible personal property without any deduction whatever for expenses or costs incidental to the conduct of the business. The gross receipts include any consideration received from the exercise of an option contained in the rental or lease agreement." In this instance, Taxpayer's documentation demonstrated that, at the commencement

of the rental transactions, it offered Customers various options, which include returning the rental car without refilling the fuel tank. Specifically, pursuant to the rental agreements, Customers were afforded options when they return the rental cars without refilling the fuel tanks, including pre-pay or post-pay the fuel based on the amount of fuel Customers consumed. Thus, Taxpayer offered, and Customers exercised, the options contained in the rental agreements. Taxpayer noted Customers' choice(s) in the rental agreements; Customers initialed and acknowledged their choice(s) stated in the rental agreements. As a result, the Fuel Refill Charges arose from, and were attributed to, the options chosen by Customers concerning the rental cars pursuant to the rental agreements, and, therefore, were part of the consideration of the rental transactions.

Taxpayer asserted that it itself was the consumer of the fuel under [45 IAC 2.2-4-27\(d\)\(4\)](#) because it supplied the rental cars with fuel. But, its documentation demonstrated otherwise. Taxpayer's supporting documentation showed that Taxpayer and Customers inspected the rental cars; that Taxpayer noted the level of the fuel in the rental cars; that Customers are required to return the rental cars in a good condition similar to the condition before Customers used the rental cars; and that Customers were required to return the car with the same level of fuel without incurring additional charges. Thus, Taxpayer did not furnish rental cars with fuel under its rental agreements because the rental cars were required to be returned at the same amount of the fuel. While Taxpayer's rental cars contained sufficient fuel ready to be used, Customers themselves were responsible for the consumption of the fuel. Thus, Customers were the consumers of the fuel in the rental transactions at issue. Only when Customers returned the rental cars without the same amount of fuel, did Taxpayer impose the Fuel Refill Charges. Thus, Taxpayer was not the consumer of the fuel and its reliance of [45 IAC 2.2-4-27\(d\)\(4\)](#) is misplaced.

Finally, Taxpayer invited the Department to conclude, in its favor, that a sales tax on the Fuel Refill Charges is a tax on a tax, which resulted in tax pyramiding and has been discouraged by the Indiana legislature. The Department, however, must respectfully decline Taxpayer's invitation because the Indiana General Assembly has addressed Taxpayer's concern by allowing various exemptions to the sales tax, which are outlined under IC § 6-2.5-5 et seq. As discussed above, for sales/use tax purposes, Taxpayer, as a lessor of a rental transaction, is considered to be a retail merchant of a retail transaction. Thus, pursuant to [45 IAC 2.2-4-27\(a\)](#), while the gross receipts from renting or leasing tangible personal property are taxable, exemptions to the sales/use tax are also afforded to an equivalent sales transaction, such as the rental transaction in this instance.

In short, the Fuel Refill Charges were options offered under the rental agreements and were part of consideration with respect to the rental transactions. Thus, the Fuel Refill Charges are subject to sales tax.

FINDING

Taxpayer's protest is respectfully denied.

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